

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DWAYNE STOUTAMIRE,)	CASE NO.1:16CV2840
)	
Plaintiff,)	JUDGE CHRISTOPHER A. BOYKO
)	
Vs.)	
)	
POLLY SCHMALZ, ET AL.,)	ORDER
)	
Defendant.)	

CHRISTOPHER A. BOYKO, J:

This matter is before the Court on Plaintiff Dwayne Stoutamire’s Motion for Relief from Judgment Pursuant to Federal Civil Rule of Procedure 60(b). (ECF # 42). On September 6, 2018, the Court adopted the Magistrate Judge’s Report and Recommendation that Defendants’ Motion for Summary Judgment be granted on Plaintiff’s claims because Plaintiff failed to exhaust his administrative remedies under the Prison Litigation Reform Act. The Court modified the Recommendation of the Magistrate Judge that the claims be dismissed with prejudice and instead dismissed Plaintiff’s claims without prejudice. On September 19, 2018, Plaintiff filed an Appeal of the Court’s Judgment and on September 20, 2018, he filed an Amended Notice of Appeal of the Court’s Judgment. On October 9, 2018, Plaintiff filed his Motion for Relief from Judgment.

Because Plaintiff has filed his appeal, the Court lacks jurisdiction to rule on his Motion for Relief from Judgment. In *United States v Demjanjuk*, 128 Fed. Appx. 496 (6th Cir. 2005), the Sixth Circuit stated:

The filing of an appeal with this Court generally divests a district court of jurisdiction over the case. In the district court's discretion, however, it may enter

an order stating that it is disposed to grant a Rule 60(b) motion, which would allow the requesting party to move this Court to remand the case, thereby once again vesting jurisdiction in the district court.... [T]he district court is under no obligation to issue such an order, and in fact [this appeal was characterized] as a “procedural misstep” at oral argument. We agree. The district court did not abuse its discretion in refusing to rule on ... [a] Rule 60(b) motion following ... [an] appeal to this Court.

Quoting Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville, 274 F.3d 377, 403 (6th Cir.2001) (internal citations omitted).

Therefore, in light of the above precedent the Court denies Plaintiff’s Motion for Relief from Judgment for lack of jurisdiction. Furthermore, because the Plaintiff’s dismissal was without prejudice, he is not foreclosed from pursuing his claims upon exhaustion of his administrative remedies.

IT IS SO ORDERED.

s/Christopher A. Boyko

CHRISTOPHER A. BOYKO
United States District Judge